

Assessing Legal Issues for Farm & Ranch Women

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History and Background:

Women Farmers actually pre-date America! Indigenous women have been farming since time immemorial. Over the centuries female farmers have continued to increase, today “In the United States about 14 percent of principal operators are female farmers and they control about 7 percent of farmland.”(1)

“What do women grow? Statistically, the latest data available from the USDA 2012 Census of Agriculture shares that women in agriculture primarily (26 percent) operate farms with a combination of row crops(including hay production). Twenty-three percent of female farmers in America operate beef cattle operations, and 22 percent operate a combination of animals/livestock. Less than 10 percent of farms operated by women grow grains and oil seeds.(2) Updated statistical data from the most recent Agricultural Census will be available in February 2019.”



Food & Ag Law and Policy: Hierarchy of Law

International law – many conventions, treaties and agreements in food, also some tribes have treaties that were made with the forming United States, these treaties still exist, many of which contain agricultural provisions.

Federal Agricultural Law and Policy

➤ Farm Bills

- Most recent Agricultural Act of 2018, Prior Farm Bills every five years beginning with the Agricultural Adjustment of 1933

➤ Food Safety Modernization Act

- Other Federal laws relevant to food and agriculture (natural resources, lands, forests, commercial obligations, interstate commerce, intellectual property, etc.)

State & Tribal Laws

Most domestic laws in food and agriculture are found at the state level, Tribes are formulating and adopting new laws and regulations. IFAI launched the Model Tribal Food and Agriculture Code in December of 2018. In addition, laws governing contracts, divorce, real and personal property, commercial sales, and more are frequently at the state/tribal level, and all of these impact agricultural production and sales. Local/municipalities may also have laws impacting ag, especially around food and safety for direct marketing (farmers markets, local sourcing, &c.)



When might you want to recommend speaking with a lawyer? A few examples.

- The farmer or rancher you're working with:
 - Wants to leave their farm business to someone in a will or put lands they own in trust
 - Selling their farm business and needs to divide assets and manage debts
 - Received complaints about odor/visual of their agricultural operation
 - Wants to start an agritourism operation
 - Wants to invite interns or volunteers to the farm to work
 - Needs to assess compliance with food safety laws or wants to engage in a voluntary audit or compliance review with regulators
 - Wants to grow industrial hemp, now that the 2018 Farm Bill has decriminalized hemp
 - Is scaling up their business
 - Had a visit from a regulator
 - Had someone injured while on their farm/ranch
 - Wants to join or help start a food hub
 - Was turned down for a loan

Subjects:

We selected agricultural law topics of interest to farmers or legal questions that we receive the most often.

1. Business Structures
2. General liability
3. Food Safety
4. Property
5. Environmental Law
6. Agricultural Labor Law
7. Estate Planning
8. Sales and Tax
9. Insurance
10. Discrimination



Business Structures:

The vast majority (86.7%) of farms in the United States operate as sole proprietorships (1).

United States Farms by Legal Status	2012
Total Number of Farms	2,109,303
Family of Individual (sole proprietorship)	1,828,946 (86.7%)
Partnerships	137,987 (6.5%)
Corporations	106,746 (5.1%)
Other (Cooperative, estate, or trust)	35,654 (1.7%)

Sole proprietorships, however, come with inherent risk and the following slides discuss other forms of incorporating that offer more protection and tax Incentives.



Business Structures Chart:

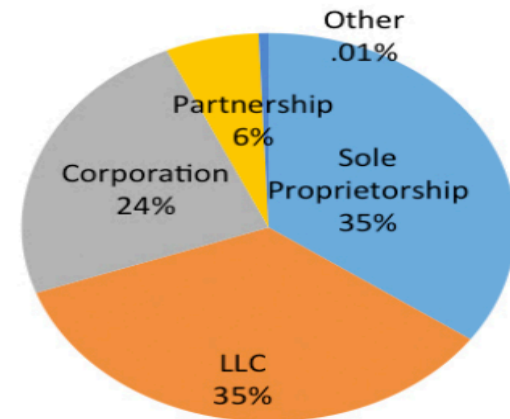
Choice of Entity

Type of Entity	Limited Liability	Taxation	Ease of Transfer	Raising Capital
Sole Proprietorship	No	Taxed as an individual	Transfer of individual assets	Less appropriate
General Partnership	No, but may elect to become a limited liability partnership.	Partnership taxation	Transfer of capital interest	Appropriate where structured as a limited partnership
Limited Liability Company	Yes	May choose to be taxed as a partnership or as a corporation. Single member LLC is a "disregarded entity."	Transfer of units	Yes
Corporation	Yes	May choose to be taxed as a Partnership (S Corp) or as a Corporation (C Corp.)	Transfer of shares	Yes
Non-Profit Corporation	Limited Liability for members and uncompensated board members.	Tax exempt	Transfer of assets to other than another non-profit is prohibited.	Yes
Cooperatives	Limited Liability for Members	Taxed as a cooperative	Transfer restricted to other eligible cooperative members (farmers).	Yes

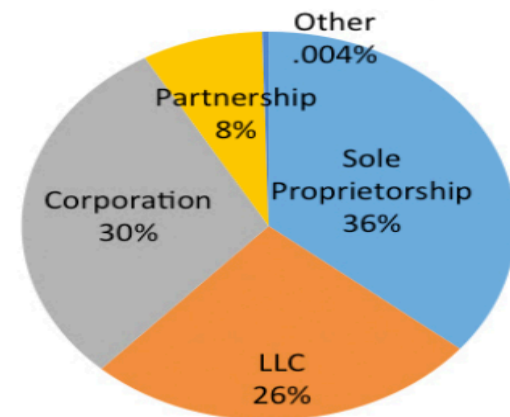
Business Structures

Depending on the size of your operation, what you are producing and “Experienced legal and tax experts can help with specific questions in forming and choosing a business structure most suited to individual situations”. Key questions to ask those sharing ownership and operation of the farm include: Will a partner or family member share farm ownership? If so, how much? What does each partner provide to the business? Do family members have an interest in taking over the business, and what is their current participation? Will friends or family invest in the farm? Will they want a say in operations? How will personal assets be protected from farm liabilities? Will there be off-farm income that affects tax liability?

Animal Farming



Crop Farming



Farm Liability:

Generally speaking liability means how legally responsible a person is for their actions. For farmers and ranchers liability can arise from a number of activities, including just operating a farm or ranch: nuisance lawsuits can arise from farm/ranch odors, noise, and other concerns.

“Liability is a significant concern for farmers, in particular a sole proprietorship because the owner and the business are considered one and the same. The owner is personally liable for all business debts, judgments, or lawsuits. This can put the owner’s non-exempt personal property at risk (1).”

“Farmers may engage in non-production activities, such as agritourism or processing, and may want to structure those higher-risk activities as separate businesses to limit tort and other potential liabilities (2).”



Farm Liability: Visitors to the Farm or Ranch

Does the farmer or rancher you work with:

- Want to do agritourism of some kind?
 - Tours of the farm or ranch, corn mazes, pumpkin patches, using part of the farm or ranch land for non-agricultural activities like mudders, races, or other events
- Have a u-pick part of their operation or on-farm CSA pickup?

All of the people coming onto the farm or ranch for these activities are examples of “invitees.” Generally, these are people who are there with permission of the landowner or operator. Because they’ve been invited, the law typically says they’re owed the highest duty of care. Practically that means they must be warned of any potential dangers and premises must be relatively safe. Different jurisdictions may have different rules for how a warning needs to be issued. Not following those guidelines can greatly increase a farmer or rancher’s risk of incurring and losing a lawsuit if a visitor is injured.



Food Safety:

The Food Safety Modernization Act (FSMA) is a federal law passed in 2011 that made sweeping changes to food safety regulation. The rules that the FDA has developed, especially the Produce Safety Rule, Human Food Rule, and Animal Feed Rule, may have legal implications and raise legal risks for farmers and ranchers whose operations must comply with these rules.

All the FSMA rules have various exemptions that producers may fall into, especially smaller operators. However, those exempt under FSMA won't be exempt from general food safety laws, products liability laws, commercial code laws, and consumer protection laws that give consumers injured or harmed by food safety problems.



Food safety legal issues

- Recommending a lawyer may be something you want to do to help farmers and ranchers mitigate legal risk around food safety. A few circumstances:
 - Potential for liability arising from regulator review or voluntary audit for FSMA
 - Determining what legal rules may apply to a particular farm or ranch under FSMA, and if they're exempt what steps they may need to take legally to remain exempt
 - Aggregated liability for farmers selling into food hubs
 - Jurisdiction-specific advice on compliance with food safety regulations

Environmental Law:

Environmental laws cover frequently overlap with agricultural production and address a wide variety of subjects: pesticide use, water quality, irrigation, air.

Major Federal Statutes: Hazardous waste, The Clean Water Act, The Clean Air Act, The Federal Insecticide, Fungicide, and Rodenticide Act, The Endangered Species Act and Conservation Programs (1).

Don't forget that States, municipalities and Tribes likewise have authority to promulgate environmental laws, be sure to check your region for various standards.

➤ In addition to regulatory problems, environmental considerations can impact leasing agreements for farm or ranch land. Pesticide use is just one example.



Property and Estate Planning

- Estate planning— wills, trusts, and other transitional plans— are essential and typically necessitate legal advice. An attorney can help ensure that a will is valid and properly filed to avoid problems after death that might split property or harm the farm/ranch business.
- There are some specific issues with property that may also necessitate legal advice:
 - Tenancies. Depending on the type of tenancy involved there may be specific and deliberate legal requirements to form the tenancy the farmer wants. Without legal advice it may be invalid.
 - Heirs property. A significant contributor to landloss for black farmers: Interests in land that were deemed to pass to heirs determined by courts led to land fractionation. Legal solutions are available, legal advice needed.

Contracts

- Any time a farmer or rancher is involved in signing a contract, it's a good idea to recommend they have an attorney review it if possible. Even a simple contract can raise a lot of questions. Some examples:
- For Livestock contracts:
 - Rejection of unhealthy animals
 - What environmental rules must the rancher comply with
 - Who controls inputs
 - What legal protections does the contract offer you if something goes wrong?
- For produce contracts:
 - What happens if harvest is impossible (weather, other disasters)
 - Are pesticides allowed? What kind? When is application allowed?
 - What happens if seeds are defective— who is responsible?

Agricultural Labor

- Federal law requires that an insurance policy or liability bond be in place before farm labor contractors, ag employers, or ag associations transport workers in any vehicle they operate, own, or control.
- State laws may or may not require workers' comp insurance also
- OSHA rules may require specific standards for farm labor machinery and equipment— rollover structures for tractors, safety devices for field equipment, etc
- State laws typically have worker safety rules and require employers to provide safe working conditions. This can apply even to volunteers— a lawyer can help walk through requirements and plans for your farmer or rancher.

Insurance:

Maintaining appropriate business insurance is essential for protecting your business from liability in case your products cause injury or illness to a consumer or if anyone is injured while you or your employees are carrying out business activities (1).

There are some insurance programs for larger specialty crop operators. The newer Whole-Farm Revenue Protection insurance provides coverage under one policy against loss of revenue that the operator expects to earn or would obtain from commodities she produces during the insurance period. But for the majority of smaller scale specialty crop producers (fruits, vegetables and nuts), government insurance, crop subsidies, and disaster payments are not tools they can use to manage their risk. Diversification of the farm operation (in terms of crops and market outlets) and smart business structure formation are important tools for these smaller-scale producers (2).



Direct Marketing:

Farm Stands

CSA's

Farmers
Markets

U Pick

Direct Sales

“In its simplest form direct farm marketing means any transaction between the person who raises the food and the person who consumes it. In its more complicated forms, direct farm marketing might involve such activities as producers joining together in cooperatives to sell their produce and chefs establishing local sources for fresh ingredients from which to prepare their meals. In all of its forms, direct farm marketing is an effort to establish personal contact between the people who raise the food and the people who eat it. (1).”

- Potential legal issues in direct marketing can include potentially any of the topics we've discussed today. Food safety liability and contracts may be two of the most likely.



Sexual Discrimination and sexual harassment:

Dealing with both sexual discrimination and harassment is an unfortunate reality for far too many farm and ranch women operators, female agricultural service providers, and female farm and ranch laborers. Both situations can necessitate legal advice.

- For farm and ranch owners who want to protect their operations and employees: developing a discrimination and harassment policy with the assistance of an attorney
- For victims of discrimination and harassment: speaking with an attorney can help outline your rights and remedies under a variety of laws.
 - Discrimination in lending in particular: may have rights of appeal if public lending, Fair Credit Reform Act and other federal consumer protections laws around credit and lending may offer solutions for private lending. Speaking to an attorney will help determine options.
 - Not discriminatory but a related issue: women may have a difficult time restoring or building credit after a divorce, particularly if their former spouse's credit history is entangled with theirs. Seeking legal counsel can expedite the process of restoring or rebuilding good credit.
 - Harassment is considered a form of discrimination by the Equal Employment Opportunity Commission.



Addressing sexual harassment: suggestions for farm and ranch owners

- Adopting a sexual discrimination and harassment policy for the farm or ranch business
 - This is not only a good way to manage legal risks, it can also encourage victims to come forward and report by making the reporting process easy to find and follow.
 - Sample policies are available through TA providers and linked here in the notes. But it's strongly recommended to have the farmer or rancher's specific policy reviewed by an attorney.
- In some states, these policies may be required for employers: New York has a relatively new law that requires this. Other states have proposed similar laws.
- Having a policy is a good first step, but training employees on the policy may also be required by local or state law. It's also a best practice. Checking with an attorney to see if training is required and what kind is a good idea.

Finding an Agricultural Lawyer

Resources to find specialized law practice for farmers and ranchers

Finding agricultural and food lawyers

- American Association of Agricultural Lawyers (AALA)
 - AALA is a national association of attorneys who specialize in food and agricultural practice. AALA members practice law many different clients, from individual farmers and ranchers to corporate.
 - The AALA website has an interactive map of their member attorneys.
 - www.aglaw-assn.org
- Farmers Legal Action Group (FLAG)
 - FLAG is a nonprofit law center that has helped farmers with legal services for over 30 years.
 - www.flaginc.org
- Farmers Legal Resource Guide:
 - <https://www.farmaid.org/our-work/resources-for-farmers/farmer-resource-guides/legal-resources-farm-aid-resource-guide/>
- State bar associations
 - Every state has a bar association of member attorneys in the state. If you contact the state bar, they may provide referrals to member attorneys with specific specialties depending on your farmer or ranchers' needs.

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